

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

Google Inc.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
	)	
	)	
v.	)	No. <u>3:14cv981 HTW-LRA</u>
	)	
	)	<b>Declaration of Brian Downing in</b>
	)	<b>Support of Plaintiff Google Inc.'s</b>
Jim Hood, Attorney General of the State	)	<b>Motion for Temporary Restraining</b>
of Mississippi, in his official capacity,	)	<b>Order and Preliminary Injunction</b>
<i>Defendant.</i>	)	
	)	

I, Brian Downing, hereby declare as follows:

1. I have been an employee of Google Inc. ("Google") since June 2008. I am a Director in the Legal Department at Google, focusing on issues relating to Google Search. I have been a Director since December 2013. This declaration is based on my personal knowledge, review of relevant Google business records, and conversations with other Google personnel, and I am competent to so testify if called upon as a witness.

**Background on Google**

2. Google is one of the world's leading technology companies, offering a variety of products and services to tens of millions of daily users.

3. Google was founded in 1998 and is headquartered in Mountain View, California. It has over 50,000 employees worldwide.

## **Search**

4. Since its founding, Google's corporate mission has been "[t]o organize the world's information and make it universally accessible and useful." Google's search engine ("Google Search" or "Search") is designed to help fulfill that mission. Google Search is free to use, and is used by over one billion users around the world. Search users send Google approximately 3.5 billion search queries per day, equating to about 40,000 search queries per second.

5. Search is built upon a constantly updated index based upon an algorithmic review of many billions of web pages, selected from over 60 trillion pages that Google has seen to date on the world wide web. To date, Google has committed over one million computing hours to build and maintain the index.

6. Google's process for reviewing and maintaining its index of third-party webpages is explained on a publicly available webpage. A true and accurate copy of the content webpage, as it appeared on December 10, 2014, at <http://www.google.com/insidesearch/howsearchworks/crawling-indexing.html>, is attached hereto as Exhibit 1.

7. The Search index reflects the contents of a webpage as created and maintained by the host of the webpage. Google does not create or maintain the content, with the exception of pages Google itself creates (e.g., <https://www.google.com/intl/en/about/>). Nor does Google accept payment to improve a webpage's ranking in its Search results. Google does receive payment for advertisements, which appear separately from Search results.

8. When a user enters a search query into Search, Search's algorithm processes the query against its index of webpages. The algorithm generates a ranked list of webpages, including videos, news articles, etc. responsive to the query. If a user finds a result helpful, she may click on it, and she will then be directed from Google.com to the webpage corresponding to the link. Alternatively, the user can craft and resubmit a new query.

9. Search's algorithm considers a multitude of signals to generate search results. An explanation of Search's algorithm is accessible on a publicly available webpage. A true and accurate copy of that webpage, as it appeared on December 10, 2014, at <http://www.google.com/insidesearch/howsearchworks/algorithms.html>, is attached hereto as Exhibit 2.

10. Whether a site has purchased advertising from Google plays no role in the Search algorithm.

11. Consistent with its mission to make the world's information "useful" and "accessible," Google aims to provide U.S.-based users with access to the entire publicly-available world wide web.

12. For Google Search services offered to countries with less robust free speech protections, Google limits Search results on those country-specific sites in a manner consistent with that country's law. These countries, unlike the United States, do not have the protections of the First Amendment or of the Communications Decency Act (CDA).

13. While Google's goal is to provide users of Search in the U.S. with access to the whole of information and materials publicly available on the world wide web, it does restrict Search results in certain limited circumstances. Webmaster-focused circumstances are set forth

in Google's Webmaster Guidelines, which are accessible on a publicly available webpage. A true and accurate copy of Google's Webmaster Guidelines, as they appeared on December 10, 2014, at <https://support.google.com/webmasters/answer/35769?hl=en>, is attached hereto as Exhibit 3.

14. There are additional categories of third-party webpages that Google removes, demotes, or suppresses. These categories are outlined in Google's Removal Policies, which are accessible on a publicly available webpage. A true and accurate copy of Google's Removal Policies, as they appeared on December 10, 2014, at <https://support.google.com/websearch/answer/2744324?hl=en>, is attached hereto as Exhibit 4.

15. Google's substantial commitment of resources to combat illicit content, including, among other things, its efforts to restrict inappropriate or potentially unlawful content from Search results, has generated positive results. Some of these results are described in the October 17, 2014 report *How Google Fights Piracy*, a true and accurate copy of which is attached hereto as Exhibit 5. Coinciding with the release of *How Google Fights Piracy*, Google announced changes to its Search algorithm which caused sites with high levels of removal notices under the Digital Millennium Copyright Act to often appear lower in search results. *See* Exhibit 14 to Declaration of Sheily Chhabria in Support of Plaintiff Google Inc.'s Motion for Temporary Restraining Order and Preliminary Injunction, filed contemporaneously herewith, at 1-2.

#### **Autocomplete**

16. A feature of Google Search is Autocomplete. Autocomplete anticipates a query as the user types and predicts the query terms the user is seeking to enter. The user can click on

a prediction or can complete entering her desired search terms without selecting one of Autocomplete's predictions.

17. An explanation of how Autocomplete's predicted queries are generated is accessible on a publicly available webpage. A true and accurate copy of that webpage, as it appeared on December 10, 2014, at

<https://support.google.com/websearch/answer/106230?hl=en>, is attached hereto as Exhibit 6.

**Attorney General Jim Hood and the Subpoena Served on October 27, 2014**

18. I have reviewed the Administrative Subpoena and Subpoena Duces Tecum ("Subpoena") served on Google on October 27, 2014. The Subpoena covers a broad range of content related to Google's products, including Search and its Autocomplete function. As detailed in this Declaration, the scale of these services is immense. Responding to the Subpoena, with its 141 document requests and 62 interrogatories would be incredibly burdensome, in terms of time and resources.

19. The Subpoena identifies various content found through Google Search and Search's Autocomplete function that it deems to be problematic. The content in question is created and developed by third parties, not by Google. As an example, the Subpoena contains one screenshot of Search results. I have personally reviewed this screenshot and can confirm that none of the Search content in the screenshot was created or developed by Google.

20. I have reviewed certain letters, press statements, and transcripts of speeches from Mississippi Attorney General Jim Hood, made over the last 18 months, in which he has repeatedly threatened to bring legal action against Google if it does not restrict certain content.

In each case, the content the Attorney General identified was generated by third parties, not Google.

21. The Attorney General's threats continue to burden Google's speech and threaten to chill it to this day by attaching potentially significant consequences to Google's expression of its editorial judgment in its Search results and the use of certain words in Autocomplete.

22. While Google has worked with the Attorney General where appropriate, it has declined his request that Google effectively delegate to him the tasks of deciding what Search results and Autocomplete predictions to make available, and how Google should craft, enforce, and apply its Webmaster Guidelines and Removal Policies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2014, in Mountain View, California.

  
Brian Downing